IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AARON ROME,	§	
	§	
Plaintiff,	§	
v.	§	
	§	
HCC LIFE INSURANCE COMPANY,	§	
	§	**C.A. No. 3:16-CV-02480-N**
Defendant.	§	
	§	

DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

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DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

Despite artfully pleaded state law claims, Plaintiff's Complaint is fundamentally an unpled claim for disability benefits under an ERISA plan. Because ERISA preempts state law claims that seek to alter ERISA's remedial provisions, Defendant HCC Life Insurance Company ("Defendant") moves to dismiss with prejudice all state law claims pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56.

INTRODUCTION

HCC Life Insurance Company ("Insurer") issued a disability policy ("Policy") to the National Hockey League ("NHL") for the benefit of active NHL hockey players. The Policy is established and maintained pursuant to a Collective Bargaining Agreement ("CBA") between the NHL and the National Hockey League Players' Association ("NHLPA"), and it constitutes an employee welfare benefit plan. As such, the Policy/Plan is subject to ERISA.[1]

Plaintiff Aaron Rome, a former NHL player, sought benefits under the Policy, and the Insurer later denied his claim pursuant to a claims review letter dated February 5, 2016. Without exhausting his administrative remedies under the Plan, Plaintiff filed the present lawsuit in state court alleging numerous state law claims against various defendants. All defendants moved for dismissal or, in the alternative, summary judgment. (*See* Dkt. 13) Plaintiff eventually agreed to dismiss all defendants (except HCC Life) without prejudice, and agreed to stay the case to exhaust administrative remedies. (Dkt. 28) On December 20, 2016, this Court granted the Agreed Motion to Dismiss Certain Defendants Without Prejudice and to Stay so that Plaintiff could pursue his rights to an administrative appeal. (*See* Dkt. 29)

[1] Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461 ("ERISA").

Pursuant to the administrative appeal process, on or about August 4, 2017, HCC Life affirmed the denial of disability benefits to Plaintiff. (*See* Pl. Status Update, dated September 15, 2017, Dkt. 33) Plaintiff notified the Court, and the stay was lifted. (*See* Order, dated September 25, 2017, Dkt. 34) HCC Life is now re-urging the dismissal and, in the alternative, summary judgment points raised before Plaintiff's agreement to stay the case. (*See* Defendants' Motion to Dismiss, Dkt. 13)

STATEMENT OF FACTS

Defendant

1. Defendant HCC Life Insurance Company ("HCC Life" or "Insurer") is the insurance company that issued the Policy at issue in this lawsuit. (Appendix (hereinafter "App") App. 1 (Ex. 1 – Decl. of Cooney) at ¶ 5, Exhibit A, App. 6 (The Policy) at App. 11)[2]

2. The National Hockey League is an unincorporated ice hockey league composed of thirty member clubs located throughout the United States and Canada. (App. 67 (Ex. 2 Decl. of Harnett), App. 68 at ¶ 3)

3. The NHL Players' Health and Benefits Fund (the "Fund") is a trust fund jointly established by the NHL and the NHLPA to provide benefits to NHL players pursuant to the CBA between the NHL and the NHLPA. (App. 67 (Ex. 2 - Decl. of Harnett), App. 68 at ¶ 4)

4. Board of Trustees, National Hockey League Players' Health Fund a/k/a The Board Of Trustees Of The NHL Players' Health and Benefits Fund (the "Board") is the plan sponsor and plan administrator of the Fund; the composition of the Board is based on the negotiated CBA and includes representatives selected by the NHL and the NHLPA. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 5)

[2] The Appendix cited herein was filed on September 23, 2016, in conjunction with the original Motion to Dismiss or, in the Alternative, Motion for Summary Judgment. **The Appendix is located at Docket No. 14**.

The Policy

5. Insurer HCC Life issued Policy Number HL03PCT10050/ Certificate No. 152006 (the "Policy") to the "National Hockey League and Its Member Clubs" with effective dates of January 13, 2013 through January 13, 2016. (App. 1 (Decl. of Cooney) at ¶ 5, Exhibit A, App. 6 (The Policy) at App. 8)[3]

6. The Policy is an ERISA Benefit Plan (the "Plan") established and maintained by the NHL and NHLPA to provide disability benefit coverage to active NHL players. In addition to disability benefits, the Fund also provides other benefits including medical coverage, dental coverage, life insurance and accidental death coverage, and spousal life and accidental death and dismemberment coverage. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 7; *see also* App. 189-191)

7. Subject to its terms, conditions, and exclusions, the Policy provides benefits in the event of disability to the "Insureds". (App. 1 (Decl. of Cooney), App. 2 at ¶ 5, Exhibit A, App. 6 (The Policy) at App. 7) The Policy's Schedule defines five categories of "Insureds," and each category includes the requirement that the hockey player be considered an "active" (non-retired) player in the National Hockey League, a concept defined separately in the CBA. (App. 1 (Decl. of Cooney), App. 2 at ¶ 5, Exhibit A, App. 6 (The Policy) at App. 8)

8. The NHL Clubs contribute to the Fund for the costs of the benefits provided by the Fund, and the Fund is responsible to pay all premium payments due to the Insurer under the Policy. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 8)

9. The Board files a "Form 5500" with the Internal Revenue Service with respect to the Fund. Form 5500 is entitled "Annual Return/Report of Employee Benefit Plan" and contains instructions that "*This form is required to be filed for employee benefit plans under sections 104*

3 The "National Hockey League and Its Member Clubs" is the legal name for the NHL.

and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6047(e), 6057(b), and 6058(a) of the Internal Revenue Code (the Code)." (App. 67 (Ex. 2 – Decl. of Harnett), App. 69 at ¶ 9; *see also* Exhibit A, App. 72 (Form 5500) at App. 73)

Plaintiff's Claim

10. On or about December 19, 2014, Plaintiff submitted a disability claim form to the Insurer.

11. On February 5, 2016, the Insurer issued its claims review letter to Plaintiff and his attorney, advising Plaintiff that no benefits were payable. (App. 1 (Decl. of Cooney), App. 2 at ¶ 7, Exhibit B, App. 41 (Feb. 5, 2016 letter) at App. 42-47)

12. The February 5, 2016 letter from the Insurer to Plaintiff explained the ERISA procedure for appealing the Insurer's decision as follows:

> Because the Certificate is part of an ERISA plan [Employee Retirement Income Security Act of 1974], you have the right to have HCC Life Insurance Company review and reconsider the denial of your claim. Additionally, you have the right to review all documents pertinent to your claim, at no charge. If you wish to have HCC Life Insurance Company review and reconsider the denial of your claim, please advise us in writing within one hundred and eighty (180) days that you desire such a review. At that time, please submit any additional information, issues or comments, in writing, which Rome believes are pertinent to your claim. The appeal will be resolved within forty-five (45) days, unless special circumstances exist which may result in an extension of an additional forty-five (45) days to render a decision on your appeal. If you receive an adverse determination on your claim after review, you then have the right to file a civil action under ERISA. If you do not request a review of the denial of your claim within one hundred eighty (180) days, the denial will be final and you may be barred from bringing a legal action based upon your failure to exhaust administrative remedies.
>
> (App. 1 (Decl. of Cooney), App. 2 at ¶ 7, Exhibit B, App. 41 (Feb. 5, 2016 letter) at App. 46-47)

13. After the February 5, 2016 letter was issued, significant correspondence was exchanged between the parties in which Plaintiff's counsel was provided additional information

concerning the decision, the appeal process, and the ERISA-based nature of the plan. (App. 1 (Decl. of Cooney), App. 2-4 at ¶¶ 8-13, Exhibits C, B, D, E, F, G, & H, App. 48 - 66)

State Court Complaint

14. On August 3, 2016, six days after requesting an appeal of the original claim decision, Plaintiff filed this action in Dallas state court. In the Petition, Plaintiff alleges claims for relief for "V. Request for Declaratory Relief; VI. Breach of Contract; IX. Conspiracy to Violate Sections 541.060 and 541.061 of the Texas Insurance Code; and X. Vicarious Liability." (*See* Complaint, pp. 8-12, at Dkt. 1-2)

15. On August 26, 2016, HCC Life timely filed a Notice of Removal in the Northern District of Texas, contending the District Court had subject matter jurisdiction as the claim was governed by ERISA and, alternatively, the District Court had diversity jurisdiction. (*See* Dkt. 1)

16. On December 20, 2016, the Court granted a Motion to Dismiss various other defendants, and stayed the case so that Plaintiff could pursue the administrative appeal of his disability claim. (*See* Order, December 29, 2016 (Dkt. 29)

17. On or about August 4, 2017, pursuant to the Plan's administrative appeal process, the denial of disability benefits to Plaintiff was affirmed. (*See* Pl. Status Update, dated September 15, 2017, Dkt. 33)

18. Plaintiff is now once again pursuing state law claims with regard to the denial of disability benefits governed by ERISA.

ARGUMENTS AND AUTHORITIES

I. LEGAL STANDARD FOR MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

A complaint "must contain… a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). In order to survive a motion to dismiss, a

plaintiff must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Fifth Circuit has affirmed that, as long as the documents are referred to in the plaintiff's complaint and central to the claim, the court may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment. *Collins v. Morgan Stanley Dean Witter* 224 F.3d 496, 498-99 (5th Cir. 2000). On that legal basis, this Court can consider documents attached to this Motion without converting it to a motion for summary judgment. These documents include the Policy at issue and written communications between the Insurer and the Claimant during the claim investigation.

Alternatively, Rule 56(c) of the Federal Rules of Civil Procedure allows summary judgment when there is no genuine issue as to any material fact and the party moving for summary judgment is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Melton v. Teachers Ins. & Annuity Ass'n of Am.*, 114 F.3d 557, 559 (5th Cir. 1997).

II. THE POLICY IS GOVERNED BY ERISA.

ERISA defines an "employee welfare benefit plan" as:

> any plan, fund or program which was … established or maintained by an employer or by an employee organization, or by both, to the extent that ***such plan, fund or program was established or is maintained for the purpose of providing for its participants*** or their beneficiaries, ***through the purchase of insurance*** or otherwise, (A) medical, surgical, or hospital care or benefits, or ***benefits in the event of*** sickness, accident, ***disability***, death or unemployment….
>
> 29 U.S.C. § 1002(1) (emphasis added).

To determine whether a particular plan qualifies as an ERISA employee welfare benefit plan, this Court must determine whether the Plan: (1) exists; (2) falls outside the Department of Labor's safe-harbor provision; and (3) satisfies the primary elements of an ERISA "employee benefit plan"—a plan established or maintained by an employer and/or employee organization for the benefit of employees. *See Martin v. Trend Pers. Servs.*, 656 Fed. App'x 34, 36 (5th Cir. 2016) (quoting *Meredith v. Time Ins. Co.*, 980 F.2d 352, 355 (5th Cir. 1993)). Here, as a matter of law, the Policy is a part of an ERISA plan; indeed, this case involves a quintessential ERISA plan.

A. Existence of a Plan.

A formal document designated as "the Plan" is not required to show an ERISA plan exists. *See Mem'l Hosp. Sys. v. Northbrook Life Ins., Co*. 904 F.2d 236, 240-41 (5th Cir. 1990) (citing *Donovan v. Dillingham*, 688 F.2d 1367, 1373 (11th Cir. 1982)); *see also Davis v. Reliance Standard Life Ins. Co.*, No. 3-03-CV-2535-BD, 2004 U.S. Dist. Lexis 13595, at *7-8 (N.D. Tex. July 19, 2004). Rather, the Fifth Circuit has held an ERISA plan exists if "a reasonable person could ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits." *Mem'l Hosp. Sys.*, 904 F.2d at 240 (quoting *Donovan*, 688 F.2d at 1373). That test is easily met here. The Policy provides for specified disability benefits to active NHL players and provides a formula for calculating benefits. (App. 1 (Ex. 1 – Decl. of Cooney) at ¶ 5, Exhibit A, App. 6 (The Policy) at App. 9) Similarly, the NHL Clubs are ultimately responsible for paying the premiums pursuant to the terms of the CBA, and the Policy sets forth the relevant claims procedures. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 8; *see also* Policy, Exhibit A to Decl. of Cooney beginning at App. 7). Therefore, an ERISA Plan exists.

B. The Policy Does Not Fall Within ERISA's Safe Harbor Regulation.

The Safe Harbor regulation provides:

> [T]he terms "employee welfare benefit plan" and "welfare plan" shall not include a group or group-type insurance program offered by an insurer to employees or members of an employee organization, under which (1) [n]o contributions are made by an employer or employee organization; (2) [p]articipation in the program is completely voluntary for employees or members; (3) [t]he sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and (4) [t]he employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

29 C.F.R. § 2510.3-1(j).

Failure to satisfy any one of the Safe Harbor criteria means that a group-type insurance program will not be exempt from ERISA under this provision. *Mem'l Hosp. Sys.*, 904 F.2d at 241, n.6. Here, as a matter of law, three of the above four Safe Harbor criteria cannot be satisfied, meaning ERISA coverage exists.

1. The First Safe Harbor Criterion is not satisfied.

The first criterion—no contributions are made by an employer—cannot be satisfied because the NHL Clubs solely make contributions to the Fund for Policy premium payments. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 8)

2. The Second Safe Harbor Criterion is not satisfied.

The second criterion—participation in the program is voluntary—cannot be satisfied because the bargaining parties agreed to provide coverage to eligible active NHL players with no option to decline. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 7; *see also* Exhibit A to Decl. of Cooney at App. 7-40 (the Policy); *see also* Exhibit B to Decl. of Harnett, App. 189-284 (Benefits Guides and Relevant CBA provisions)

3. The Third Safe Harbor Criterion is not satisfied.

The third criterion—the employer and/or employee organization role is limited to collecting premiums and remitting them to the insurer—cannot be satisfied because the NHL and NHLPA not only selected the insurer, but they also negotiated the key terms of the Policy, including but not limited to eligibility criteria and coverage amounts. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 5)

Because Plaintiff cannot satisfy at least three of the Safe Harbor criteria, ***let alone all of them*** as would be required, the Safe Harbor exception does not apply and the plan is covered by ERISA.

C. Establishment and Maintenance of a Plan.

ERISA does not regulate the bare purchase of insurance. *Kerans v. Provident Life & Accident Ins. Co.*, 452 F. Supp. 2d 665, 674 (N.D. Tex. 2005). Rather, "[t]he employer must have some 'meaningful degree of participation… in the creation or administration of the plan.'" *Id.* (quoting *Hansen v. Cont'l Ins. Co.*, 940 F.2d 971, 978 (5th Cir. 1991)). Although the mere purchase of insurance is insufficient to prove an ERISA plan was established, "the purchase of a policy or multiple policies covering a class of employees offers ***substantial evidence*** that a plan, fund, or program has been established." *Mem'l Hosp. Sys.* 904 F.2d at 242 (emphasis added) (quoting *Donovan*, 688 F.2d at 1373). According to the Northern District of Texas, if an employer purchases disability insurance as well as health insurance for its employees, "[t]his suggests that the disability policy was part of 'an overall design of employee benefits' constituting an ERISA plan." *Davis*, 2004 U.S. Dist. LEXIS 13595, at *11 (quoting *Salameh v. Provident Life & Accident Ins. Co.*, 23 F. Supp. 2d 704, 710 (S.D. Tex. 1998)).

Here, in addition to disability insurance coverage, the NHL players are provided with medical coverage, dental coverage, life insurance and accidental death coverage, and spousal life

and accidental death and dismemberment coverage. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶ 7; *see also* Exhibit B to Decl. of Harnett, App. 189-244 (Benefits Guides and relevant CBA provisions) Under *Davis*, this is undeniably an ERISA plan.

Further, the NHL and/or the NHLPA are not simply offering insurance for NHL players to purchase. To the contrary, insurance coverage—disability and otherwise—is established and maintained pursuant to a CBA that was negotiated between the NHL and the NHLPA. The bargaining parties selected the Insurer, determined various eligibility and coverage provisions, and created the funding mechanism for the employee benefits; the NHL and hockey clubs pay all costs, and the players pay nothing. (App. 67 (Ex. 2 – Decl. of Harnett), App. 68 at ¶¶ 4-8; *see also* Exhibit B to Decl. of Harnett, App. 189-284 (Benefits Guides and relevant CBA provisions) Accordingly, under *Memorial Hospital System* and other Fifth Circuit law, an ERISA Plan has been "established or maintained." *See also Kidder v. H & B Marine, Inc.*, 932 F.2d 347, 353 (5th Cir. 1991) (employer established and maintained a plan when it paid premiums on behalf of employees and intended to provide welfare benefit program); *Kerans*, 425 F. Supp. 2d at 674 (citing cases). Accordingly, the Plan/Policy pursuant to which Plaintiff seeks disability benefits is subject to ERISA.

III. STATE LAW CLAIMS ARE PREEMPTED AND THE EXCLUSIVE REMEDY IS 29 U.S.C. § 1132(a)(1)(B).

"It is clear that ERISA preempts a state law cause of action brought by an ERISA plan participant or beneficiary alleging improper processing of a claim for plan benefits." *Mem'l Hosp. Sys.*, 904 F.2d at 245 (citing *Pilot Life Ins. Co v. Dedeaux*, 481 U.S. 41, 88 (1987)); *see also McNeil v. Time Ins. Co.*, 205 F.3d 179, 191 (5th Cir. 2000) (ERISA preempts a state law claim "if that claim addresses an area of exclusive federal concern, such as the right to receive benefits under the terms of an ERISA plan….").

Here, Plaintiff alleges various state law claims challenging the Insurer's denial of disability benefits under the Policy and seeks court-ordered payment of those benefits as well as other relief. (*See* Pl.'s Original Petition, at pp.8-12 & Prayer for Relief at Dkt. 1 1-2) Because the underlying Policy/Plan is governed by ERISA, Plaintiff's state law claims are preempted as a matter of law.

CONCLUSION

In sum, the NHL and the NHLPA provided disability coverage to all eligible NHL players, including Plaintiff, under an employee welfare benefit plan that is subject to ERISA. As set forth above, the ERISA Plan at issue exists, it does not fall within the DOL's Safe Harbor Regulations, and it was "established and maintained" by the NHL (on behalf of the NHL Clubs) and the NHLPA. Plaintiff's claims, therefore, are preempted by ERISA.

Respectfully submitted,

/s/ Mike Birrer

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CERTIFICATE OF SERVICE

On November 13, 2017, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. Service on all attorneys of record who are Filing Users will be automatically accomplished through notice of electronic filing.

/s/ Mike Birrer